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JAN 23 2008

Docket No.: 4635-002

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

Koichiro TANI

U.S. Patent Application No. 10/673,258

Group Art Unit: 3761

Filed: September 30, 2003

Examiner:

For: DISPOSABLE DIAPER

TRANSMITTAL OF APPEAL BRIEFMail Stop Appeal Brief - Patents
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Sir:

Submitted herewith is an Appeal Brief in support of the Notice of Appeal filed. A credit card authorization form is attached.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Kindly use the attorneys' address associated with the following Customer Number for future correspondence.

Respectfully submitted,

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APPELLANT'S BRIEF UNDER 37 C.F.R. § 41.37(c)This brief is in furtherance of the Notice of Appeal, filed in this case on
November 23, 2007.The fees required under § 41.20 and any required petition for extension of time for
filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF
APPEAL BRIEF.

Only one copy of this brief is required under § 41.37.

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This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)):

- I. Real Party in Interest.
- II. Related Appeals and Interferences.
- III. Status of Claims.
- IV. Status of Amendments.
- V. Summary of Claimed Subject Matter.
- VI. Grounds of Rejection to be Reviewed on Appeal.
- VII. Argument.
- VIII. Claims Appendix.
- IX. Evidence Appendix.
- X. Related Proceedings Appendix.

The final page of this brief bears the attorney's signature.

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I. REAL PARTY IN INTEREST

The real party in interest in this appeal is UNI-CHARM Corporation of 182 Shimobun, Kinsei-cho, Kawanoe-shi, Ehime-ken, JAPAN.

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II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

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III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There is a total of 19 claims in the application, which are identified as claims 1, 3-5, 7-10, 12-13, 15, 17, 19-20, 22-26.

B. Status of all the claims

1. Claims cancelled: claims 2, 6, 11, 14, 16, 18, 21
2. Claims withdrawn from consideration but not cancelled: none
3. Claims pending: claims 1, 3-5, 7-10, 12-13, 15, 17, 19-20, 22-26
4. Claims allowed: none
5. Claims rejected: claims 1, 3-5, 7-10, 12-13, 15, 17, 19-20, 22-26

C. Claims on Appeal

Claims on appeal are claims 1, 3-5, 7-10, 12-13, 15, 17, 19-20, 22-26 as rejected by the Final Office Action dated August 22, 2007.

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IV. STATUS OF AMENDMENTS

No Amendment was filed in response to the August 22, 2007 Final Office Action.

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V. SUMMARY OF CLAIMED SUBJECT MATTER

For the purpose of this appeal brief only, the claimed subject matter will be explained herein below with references to the specification by page and line number, and to the drawings by reference characters.

The invention of **independent claim 1** is directed to a disposable diaper (10 in FIG. 1), comprising:

a diaper body (12 in FIG. 1) having a top sheet (18 in FIG. 2), a back sheet (20 in FIG. 2), and an absorbent body (22 in FIG. 2) enclosed between the top sheet (18) and the back sheet (20);¹

a pair of side flaps (14 in FIG. 1) fixed to the diaper body (12); and

a pair of fasteners (16 in FIG. 1);²

wherein the diaper body (12) further has a pair of side edges (near reference numeral 20 in FIG. 1) extending in a longitudinal direction (L-L' in FIG. 1) of the diaper body (12);

wherein each of the side flaps (14) extends in a width direction (H-H' in FIG. 1) of the diaper body (12) and has an inner end (34 in FIG. 1) being disposed inboard of a respective one of the side edges of the diaper body and an outer end (37 in FIG. 1) being disposed outboard of the respective side edge of the diaper body, and each of the fasteners (16) is fixed to the outer end (37 in FIG. 1) of one of the side flaps (14);³ and

wherein each of the side flaps (14) is fixed to the diaper body (12) at

a fixing part (32 in FIG. 1) being arranged adjacent and along an inner edge of the inner end (34) of the respective side flap (14),

¹ Specification at page 20, lines 5-8.

² Specification at the paragraph bridging pages 19-20.

³ Specification at the paragraph bridging pages 19-20 and page 21, lines 1-5.

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a first joint part (35 in FIG. 1) located at an upper part of the inner end (34) of the respective side flap (14), and

a second joint part (36 in FIG. 1) located at a lower part of the inner end (34) of the respective side flap (14), the lower part being spaced in the longitudinal direction (L-L') from the upper part,⁴ and the fixing part (32) being spaced, in the width direction (H-H') of the diaper body (12), from the joint parts (35, 36) by a bonding-free region (FIGs. 1, 3) in which the side flap (14) is free of direct attachment to the diaper body (12);⁵ and

wherein a pulling force (A in FIG. 3), which occurs when the fastener (16) fixed to each of the side flaps (14) is pulled transversely outwardly in use, is dispersed into first and second tensile forces (B, C in FIG. 3) directed towards the first and second joint parts (35, 36), respectively, and concentrated around leg and waist openings of the diaper for enhanced fit of the diaper on a wearer in use.⁶

The invention of **independent claim 15** is directed to a method of adjusting fitting of a disposable diaper (10 in FIG. 1) about a waist and legs of a wearer when the disposable diaper (10) is worn, the disposable diaper (10) comprising a diaper body (12) and a side flap (14) fixed to the diaper body (12);⁷

wherein an inner end (34) of the side flap (14) is fixed to an inner portion of the diaper body (12), and either or both of a side edge upper end area and a side edge lower end area of the side flap (14) are joined to the diaper body (12) at an outer portion of the diaper body (12), the outer portion being spaced in a width direction (H-H') of the diaper body (12) from the inner portion;⁸

the method comprising:

⁴ Specification at page 21, lines 1-8.

⁵ Specification at page 28, lines 18-24.

⁶ Specification at page 26 line 24 through page 27 line 11, and page 6, lines 1-17.

⁷ Specification at the paragraph bridging pages 19-20.

⁸ FIGs. 3, 6, 9, 11, 13, 15, 17, 19.

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adjusting at least one of (i) lengths and (ii) widths of a first joint part (35), at which the side edge upper end area of the side flap (14) is joined to the outer portion of the diaper body (12), and a second joint part (36), at which the side edge lower end of the side flap (14) is joined to the outer portion of the diaper body (12);⁹ and

fixing a fastener (16) to an outer end (37) of the side flap (14) in a region which extends outwardly in the width direction (H-H') from a bonding-free region (FIGs. 1, 3) of the side flap (14),¹⁰ wherein the side flap (14) is free of direct attachment to the diaper body (12) in the bonding-free region, and wherein the first and second joint parts (35, 36) are spaced from each other in a longitudinal direction (L-L') of the diaper body (12) by the bonding-free region.¹¹

The invention of **independent claim 17** is directed to a method of adjusting fitting of a disposable diaper (10 in FIG. 1) about a waist and legs of a wearer when the disposable diaper (10) is worn, the disposable diaper (10) comprising a diaper body (12) and a side flap (14) fixed to the diaper body (12);¹²

wherein an inner end (34) of the side flap (14) is fixed to an inner portion of the diaper body (12), and either or both of a side edge upper end area and a side edge lower end area of the side flap (14) are joined to the diaper body (12) at an outer portion of the diaper body (12), the outer portion being spaced in a width direction (H-H') of the diaper body (12) from the inner portion;¹³

the method comprising:

adjusting respective positions of a first joint part (35), at which the side edge upper end area of the side flap (14) is joined to the outer portion of the diaper body (12), and a

⁹ Specification at page 9 line 5 through page 10 line 6, page 10 line 20 through page 12 line 13, and page 13 line 27 through page 15 line 19.

¹⁰ Specification at the paragraph bridging pages 19-20 and page 21, lines 1-5.

¹¹ FIGs. 3, 6, 9.

¹² Specification at the paragraph bridging pages 19-20.

¹³ FIGs. 3, 6, 9, 11, 13, 15, 17.

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second joint part (36), at which the side edge lower end of the side flap (14) is joined to the outer portion of the diaper body (12);¹⁴ and

fixing a fastener (16) to an outer end (37) of the side flap (14) in a region which extends outwardly in the width direction (H-H') from a bonding-free region (FIGs. 1, 3) of the side flap (14),¹⁵ wherein the side flap (14) is free of direct attachment to the diaper body (12) in the bonding-free region, and wherein the first and second joint parts (35, 36) are spaced from each other in a longitudinal direction (L-L') of the diaper body (12) by the bonding-free region.¹⁶

The invention of **Independent claim 24** is directed to a disposable diaper (10 in FIG. 1), comprising:

a diaper body (12 in FIG. 1) having a top sheet (18 in FIG. 2), a back sheet (20 in FIG. 2), and an absorbent body (22 in FIG. 2) enclosed between the top sheet (18) and the back sheet (20);¹⁷

a pair of side flaps (14 in FIG. 1) fixed to the diaper body (12); and

a pair of fasteners (16 in FIG. 1);¹⁸

wherein the diaper body (12) further has a pair of side edges (near reference numeral 20 in FIG. 1) extending in a longitudinal direction (L-L' in FIG. 1) of the diaper body (12);

wherein each of the side flaps (14) extends in a width direction (H-H' in FIG. 1) of the diaper body (12) and has an inner end (34 in FIG. 1) being disposed inboard of a respective one of the side edges of the diaper body and an outer end (37 in FIG. 1) being disposed

¹⁴ Specification at page 13, lines 1-26, and page 15 line 20 through page 16 line 20.

¹⁵ Specification at the paragraph bridging pages 19-20 and page 21, lines 1-5.

¹⁶ FIGs. 3, 8, 9.

¹⁷ Specification at page 20, lines 5-8.

¹⁸ Specification at the paragraph bridging pages 19-20.

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outboard of the respective side edge of the diaper body, and each of the fasteners (16) is fixed to the outer end (37 in FIG. 1) of one of the side flaps (14);¹⁹

wherein each of the side flaps (14) is fixed to the diaper body (12) at

a fixing part (32 in FIG. 1) being arranged adjacent and along an inner edge of the inner end (34) of the respective side flap (14),

a first joint part (35 in FIG. 1) located at an upper part of the inner end (34) of the respective side flap (14), and

a second joint part (36 in FIG. 1) located at a lower part of the inner end (34) of the respective side flap (14), the fixing part (32) being spaced, in the width direction (H-H') of the diaper body (12), inwardly from the joint parts (35, 36) by a bonding-free region (FIGs. 1, 3) in which the side flap (14) is free of direct attachment to the diaper body (12), and the second joint part (36) being spaced in the longitudinal direction (L-L') from the first joint part (35) by a section of the bonding-free region;²⁰ and

wherein each of the fasteners (16) is disposed such that the fastener (16) is not co-elevational in the longitudinal direction (L-L') with any portion of the first joint part (35) and the second joint part (36).²¹

¹⁹ Specification at the paragraph bridging pages 19-20 and page 21, lines 1-5.

²⁰ Specification at page 26, lines 18-24.

²¹ FIGs. 3, 6, 9, 11, 13, 15, 17, 19.

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The 35 U.S.C. 103(a) rejection of all claims on appeal as being unpatentable over *Robles* (U.S. Patent No. 6,004,306).

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VII. ARGUMENT

35 U.S.C. 103(a) rejection of all claims as being unpatentable over Robles

The Examiner rejects all claims under *35 U.S.C. 103(a)* as being unpatentable over *Robles*. Appellant respectfully traverses this rejection.

The key to supporting any rejection under *35 U.S.C. 103* is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under *35 U.S.C. 103* should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396. See *MPEP*, section 2141.III.

Claim 1

1. *Robles* does not teach or suggest the claim feature "wherein each of the side flaps is fixed to the diaper body at a fixing part..., a first joint part..., and a second joint part..., and the fixing part being spaced, in the width direction of the diaper body, from the joint parts by a bonding-free region in which the side flap is free of direct attachment to the diaper body."

Robles does not fairly teach the claim limitation. As can be seen in FIG. 1 of *Robles*, edges 80 along which the side panels 30 are bonded to the containment assembly 22 are not spaced from each other in the width direction by a bonding-free region, as presently claimed.

The reference also fails to suggest the claim limitation, notwithstanding the Examiner's arguments found on pages 3-4 of the August 22, 2007 Final Office Action. In particular, the Examiner

- (a) alleged that *Robles* discloses at column 12 lines 24-31 and 60-62, that panels 30 are bonded to assembly 22 at edge 80 in a bonding area of varying size and pattern;²²

²² August 22, 2007 Final Office Action at page 3, lines 1-.

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- (b) argued that the alleged teaching at (a) makes a bonding-free region possible with reasonable expectation of success
- (c) argued that either of the fixing and joint parts can be positioned transversely inward of the other;²³ and
- (d) alleged that *Robles* teaches varying the positions and dimensions of the bonding areas so as to effect a different fit for the user.²⁴

Appellant respectfully disagrees for the following reasons.

With respect to (a), *Robles* as applied by the Examiner does not teach or suggest "a bonding area of varying size and pattern."

Column 12 lines 24-31 of *Robles* is reproduced herein below

Accordingly, the waist panel 36 can be identical in size and shape to the thigh panel 38 or can have different dimensions so long as the waist panel 36 can be operatively associated to the thigh panel 38 and the containment assembly 22 of the diaper 20 to provide the multi-directional stretch characteristics of the invention as described herein. An example of suitable extensible side panels 30 to be worn by a medium sized infant are generally trapezoidal in shape having dimensions between about 2 and 4 inches in the longitudinal direction and between about 2 and 5 inches in the lateral direction.

Apparently, the cited passage discloses only the relative dimension relationship between the *Robles* waist panel 36 and thigh panel 38. The cite passage does not at all teach any bonding area, contrary to the Examiner's allegation.

Column 12 lines 60-62 of *Robles* is reproduced herein below

For example, the proximal edge 80 of the extensible side panel 30 can be joined to the outer surface 46 of the backsheet 26 or to the inner surface 44 of the topsheet 24.

Apparently, the cited passage discloses only that the *Robles* waist panel 36 and thigh panel 38 can be joined to the same or different surfaces of the assembly 22. The cite passage

²³ August 22, 2007 Final Office Action at the sentence bridging pages 3-4.

²⁴ August 22, 2007 Final Office Action at page 4, lines 1-2.

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does not at all teach any bonding area of varying size and pattern, contrary to the Examiner's allegation.

With respect to (b), since *Robles* does not include the alleged teaching (a), the reference fails to teach or suggest any bonding-free region. Appellant notes a more relevant teaching of *Robles* at column 13 lines 4-13 which is reproduced herein below

The extensible side panel 30 is preferably joined to the containment assembly 22 or to the diaper 20 by attachment means (not shown) such as those well known in the art. A suitable means for attaching each extensible side panel 30 to the containment assembly 22 is fusion bonding (e.g. ultrasonic, heat or pressure bonding). Alternatively, the extensible side panel 30 may be intermittently or continuously bonded to the containment assembly 22 using adhesive, dynamic mechanical bonding, or any other method that is known in the art.

The *Robles* teaching of intermittent bonding is, however, neither indicative nor suggestive of the claimed bonding-free region by which the claimed fixing part is spaced, in the width direction, from the joint parts. The *Robles* teaching of intermittent bonding does not suggest the desirability of the particularly claimed invention and cannot be relied upon to establish an articulated line of reasoning why the claimed invention would have been obvious.

With respect to (c), the Examiner's rationale is wrong, because

[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) (emphasis added).

Finally, with respect to (d), the Examiner has failed to cite any relevant portion of *Robles* in support of her allegation. Appellant further submits that such alleged teaching is not included in *Robles*, because according to the reference, it is the extensibility of the side panels, rather than their bonding to the assembly, that ensures proper fit to the user.²⁵ A person of ordinary skill in the art would have found the Examiner's subsequent rationale²⁶ flawed and unconvincing.

Accordingly, Appellant respectfully submits that the 35 U.S.C. 103(a) rejection as formulated by the Examiner is based on evidentially unsupported allegations and/or incorrect

²⁵ *Robles* at column 10 lines 32-47.

²⁶ August 22, 2007 Final Office Action at page 4, lines 3-7.

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interpretations of the applied reference, and lacks an articulated line of reasoning why the claimed invention would have been obvious. The rejection is improper and should be withdrawn.

2. *Robles* does not teach or suggest the claim feature "wherein each of the side flaps is fixed to the diaper body at (i) a fixing part..., (ii) a first joint part located at an upper part of the inner end of the respective side flap, and (iii) a second joint part located at a lower part of the inner end of the respective side flap, the lower part being spaced in the longitudinal direction from the upper part, and the fixing part being spaced, in the width direction of the diaper body, from the joint parts by a bonding-free region in which the side flap is free of direct attachment to the diaper body." In other words, the claim language requires that the side flap be fixed to the diaper body at three distinct locations namely, a fixing part, a first joint part, and a second joint part.

In the claimed invention, the fixing part is means for fixing the side flap to the diaper body. On the other hand, the first joint part and the second joint part are means for dispersing the pulling or tensile force.²⁷ That is, the fixing part and the two joint parts have different functions. Thus, each of the side flaps is fixed to the diaper body at three distinct location/parts having two distinct functions. Due to the two different functioning parts being provided, the claimed invention can disperse the tensile force without employing such a complex configuration as that of the *Robles* extensible side panels.

In contrast, regarding the prior art of *Robles*, each of the side flaps is fixed to the diaper body only at a first joint part (upper 80 in Fig. 1) and a second joint part (lower 80 in Fig. 1). In other words, each of the *Robles* side flaps is fixed to the diaper body by two joint parts (72, 78) having a single function of dispersing the tensile force. There is no fixing part in *Robles*.

The Examiner responded to the above argument, referring²⁸ to her argument in the March 9, 2007 Office Action. In the March 9, 2007 Office Action, the Examiner argued that the different lengths of the waist panel 36 and thigh panel 38 will necessarily cause two distinct

²⁷ Claim 1, the last paragraph.

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bonding positions with a bonding free region. The Examiner's rationale is flawed in that different lengths of the waist panel 36 and thigh panel 38 will result in at best bonding sites of different lengths, rather than a bonding free region. In addition, the Examiner has not addressed how the reference teaches or suggests the claimed three bonding locations. The rejection is improper and should be withdrawn.

For the reasons detailed above, Appellant respectfully submits that claim 1 is separately patentable over the art and does not stand or fall together with the other claims.

Claim 15

Claim 15 is patentable over *Robles* for at least the reasons detailed above with respect to claim 1, at 2 and (d).

Claim 17

Claim 17 is patentable over *Robles* for at least the reasons detailed above with respect to claim 1, at 2.

Claim 17 is also patentable on its own merits because *Robles* fails to teach or suggest the claimed step of "adjusting respective positions of a first joint part... and a second joint part." The Examiner has failed to specify how and where *Robles* teaches the respective positions of the joint parts are desirable for improved fitting. Appellant further submits that it is the extensibility of the side panels, rather than their bonding positions, that ensures proper fit to the user.²⁹ A person of ordinary skill in the art would have found the Examiner's subsequent rationale³⁰ flawed and unconvincing.

For the reasons detailed above, Appellant respectfully submits that claim 17 is separately patentable over the art and does not stand or fall together with the other claims.

²⁸ August 22, 2007 Final Office Action at page 2, the "Response to Arguments" section.

²⁹ *Robles* at column 10 lines 32-47.

³⁰ August 22, 2007 Final Office Action at page 4, lines 3-7.

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Claim 19

Claim 19 depends from claim 1, and is considered patentable at least for the reasons advanced with respect to claim 1. The dependent claim is also patentable on its own merit, because the reference as applied by the Examiner fails to teach or suggest the claim feature "one of the first and second joint parts is closer to the respective side edge of the diaper body than the other."

The Examiner's obviousness rationale found in the page 6 of the August 22, 2007 Final Office Action is flawed for at least the reason detailed above with respect to (d).

A person of ordinary skill in the art would have also found the Examiner's rationale unconvincing in that the size difference may be desirable as taught by *Robles*,³¹ and therefore there is no need to compensate for the difference in size, contrary to the Examiner's position.

For the reasons detailed above, Appellant respectfully submits that claim 19 is separately patentable over the art and does not stand or fall together with the other claims.

Claim 20

Claim 20 depends from claim 1, and is considered patentable at least for the reasons advanced with respect to claim 1. The dependent claim is also patentable on its own merit, because the reference as applied by the Examiner fails to teach or suggest the claim feature "the fixing part extends continuously along substantially an entire length, as measured in the longitudinal direction, of the inner edge of the inner end of the respective side flap, and a length, as measured in the longitudinal direction, of each of the first and second joint parts is shorter than half of that of the fixing part."

The Examiner's obviousness rationale found in the pages 6-7 of the August 22, 2007 Final Office Action is flawed because

³¹ *Robles* at column 12 lines 16-26.

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- the Examiner has failed to specify with reasonable clarity how FIG. 1 of *Robles* discloses the claimed "fixing part" and "entire length" limitations;

- the Examiner has failed to demonstrate that the lengths of the joint parts are result-effective variables and, hence, optimizable.³² The Examiner's allegation regarding *Robles*'s bonding areas³³ is wrong and evidentially unsupported, as detailed above with respect to (d).

For the reasons detailed above, Appellant respectfully submits that claim 20 is separately patentable over the art and does not stand or fall together with the other claims.

Claim 22

Claim 22 depends from claim 1, and is considered patentable at least for the reasons advanced with respect to claim 1. The dependent claim is also patentable on its own merit, because the reference as applied by the Examiner fails to teach or suggest the claim feature "the second joint part of each the side flap overlaps at least one of the leg elastic elements."

The Examiner's obviousness rationale found in the page 7 of the August 22, 2007 Final Office Action is flawed because *Robles* does not teach that the width of the joint parts as part of a bonding pattern can be modified. The Examiner at least has failed to specify where such teaching might be found.

Further, a person of ordinary skill in the art would not have been motivated to modify the width of the joint parts for improving the fit, as detailed above with respect to (d).

Finally, since leg elastic 32 is located entirely inward of the inner most ends of the side panels as best seen in FIG. 1 of *Robles*, no matter how the width of the *Robles* joint parts is modified the second joint part (presumably 78) still cannot overlap the leg elastic.

³² "[A] particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation." *In re Antonio*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977) (emphasis added).

³³ August 22, 2007 Final Office Action, at page 7 lines 1-4.

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For the reasons detailed above, Appellant respectfully submits that claim 22 is separately patentable over the art and does not stand or fall together with the other claims.

Claim 23

Claim 23 depends from claims 1 and 22, and is considered patentable at least for the reasons advanced with respect to claims 1 and 22. The dependent claim is also patentable on its own merit, because the reference as applied by the Examiner fails to teach or suggest the claim feature "first joint part of each the side flap is located on an imaginary extension of said at least one of the leg elastic elements but does not overlap any of the leg elastic elements."

The Examiner's obviousness rationale found in the page 7 of the August 22, 2007 Final Office Action is flawed because *Robles* does not teach that the width of the joint parts as part of a bonding pattern can be modified. The Examiner at least has failed to specify where such teaching might be found.

Further, a person of ordinary skill in the art would not have been motivated to modify the width of the joint parts for improving the fit, as detailed above with respect to (d).

Finally, since leg elastic 32 is located entirely inward of the inner most ends of the side panels as best seen in FIG. 1 of *Robles*, no matter how the width of the *Robles* joint parts is modified the first joint part (presumably 72) still cannot be located on the imaginary extension the leg elastic.

For the reasons detailed above, Appellant respectfully submits that claim 23 is separately patentable over the art and does not stand or fall together with the other claims.

Claim 24

Claim 24 is patentable over *Robles* for at least all the reasons detailed above with respect to claim 1.

Claim 24 is also patentable on its own merits because *Robles* fails to teach or suggest the claim feature "each of the fasteners is disposed such that the fastener is not co-elevational in the

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longitudinal direction with any portion of the first joint part and the second joint part.” The Examiner cited FIG. 12 of *Robles* as disclosing this limitation. However, as can be seen in FIG. 12 of *Robles*, at least some portion, i.e., the lower portion, of joint part 72 is co-elevational with the fastener 74.

For the reasons detailed above, Appellant respectfully submits that claim 24 is separately patentable over the art and does not stand or fall together with the other claims.

Claim 25

Claim 25 depends from claim 24, and is considered patentable at least for the reasons advanced with respect to claim 24. The dependent claim is also patentable on its own merit, because the reference as applied by the Examiner fails to teach or suggest the claim feature “an entirety of the fastener is co-elevational in the longitudinal direction with the bonding-free region’s section that separates the first and second joint parts in the longitudinal direction.”

The Examiner cited FIG. 12 of *Robles* as disclosing this limitation. However, as can be seen in FIG. 12 of *Robles*, at least some portion, i.e., the upper portion, of fastener 74 is not co-elevational with the bonding-free region between 72 and 78.

For the reasons detailed above, Appellant respectfully submits that claim 25 is separately patentable over the art and does not stand or fall together with the other claims.

Claim 26

Claim 26 depends from claims 24-25, and is considered patentable at least for the reasons advanced with respect to claims 24-25. The dependent claim is also patentable on its own merit, because the reference as applied by the Examiner fails to teach or suggest the claim feature “each of the side flaps extends continuously in the longitudinal direction from the first joint part, across the bonding-free region’s section that separates the first and second joint parts, and to the second joint part, without being interrupted by any bonding line or edge of the side flap.”

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The Examiner cited FIG. 11 of *Robles* as disclosing this limitation. However, as can be seen in FIG. 11 of *Robles*, the side flap is interrupted by the bonding line C between panels 36 and 38.

For the reasons detailed above, Appellant respectfully submits that claim 26 is separately patentable over the art and does not stand or fall together with the other claims.

Conclusion

For the reasons shown above, Appellant respectfully requests that the rejection under 35 U.S.C. 103(a) be withdrawn.

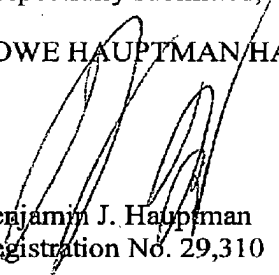
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Each of the Examiner's rejections has been traversed. Accordingly, Applicant respectfully submits that all claims on appeal are considered allowable. Accordingly, reversal of the Examiner's Final Rejection is believed appropriate and courteously solicited.

If for any reason this Appeal Brief is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned, Applicant's attorney of record.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. A disposable diaper, comprising:

a diaper body having a top sheet, a back sheet, and an absorbent body enclosed between the top sheet and the back sheet;

a pair of side flaps fixed to the diaper body; and

a pair of fasteners;

wherein the diaper body further has a pair of side edges extending in a longitudinal direction of the diaper body;

wherein each of the side flaps extends in a width direction of the diaper body and has an inner end being disposed inboard of a respective one of the side edges of the diaper body and an outer end being disposed outboard of the respective side edge of the diaper body, and each of the fasteners is fixed to the outer end of one of the side flaps; and

wherein each of the side flaps is fixed to the diaper body at

a fixing part being arranged adjacent and along an inner edge of the inner end of the respective side flap,

a first joint part located at an upper part of the inner end of the respective side flap, and

a second joint part located at a lower part of the inner end of the respective side flap, the lower part being spaced in the longitudinal direction from the upper part, and the fixing part being spaced, in the width direction of the diaper body, from the joint parts by a bonding-free region in which the side flap is free of direct attachment to the diaper body; and

wherein a pulling force, which occurs when the fastener fixed to each of the side flaps is pulled transversely outwardly in use, is dispersed into first and second tensile forces directed towards the first and second joint parts, respectively, and concentrated around leg and waist openings of the diaper for enhanced fit of the diaper on a wearer in use.

3. The disposable diaper according to claim 1, wherein the first joint part and the second joint part have a same length, as measured in the longitudinal direction.

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4. The disposable diaper according to claim 1, wherein each the side flap comprises an elastic sheet and a non-woven fabric.

5. The disposable diaper according to claim 1, wherein each the fastener is positioned at a substantial center, as seen in the longitudinal direction, of the outer end of the respective side flap.

7. The disposable diaper according to claim 1, wherein each the side flap is fixed to the diaper body at the first and second joint parts and the fixing part by thermal bonds.

8. The disposable diaper according to claim 1, wherein each the fastener comprises a fastening member and a tape substrate.

9. The disposable diaper according to claim 1, wherein a length of the first joint part, as measured in the longitudinal direction, is shorter than that of the second joint part.

10. The disposable diaper according to claim 1, wherein a length of the first joint part, as measured in the longitudinal direction, is longer than that of the second joint part.

12. The disposable diaper according to claim 1, wherein each the side flap comprises an elastic sheet.

13. The disposable diaper according to claim 4, wherein the non-woven fabric is elastic.

15. A method of adjusting fitting of a disposable diaper about a waist and legs of a wearer when the disposable diaper is worn, the disposable diaper comprising a diaper body and a side flap fixed to the diaper body;

wherein an inner end of the side flap is fixed to an inner portion of the diaper body, and either or both of a side edge upper end area and a side edge lower end area of the side flap

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are joined to the diaper body at an outer portion of the diaper body, the outer portion being spaced in a width direction of the diaper body from the inner portion;

the method comprising:

adjusting at least one of (i) lengths and (ii) widths of a first joint part, at which the side edge upper end area of the side flap is joined to the outer portion of the diaper body, and a second joint part, at which the side edge lower end of the side flap is joined to the outer portion of the diaper body; and

fixing a fastener to an outer end of the side flap in a region which extends outwardly in the width direction from a bonding-free region of the side flap, wherein the side flap is free of direct attachment to the diaper body in the bonding-free region, and wherein the first and second joint parts are spaced from each other in a longitudinal direction of the diaper body by the bonding-free region.

17. A method of adjusting fitting of a disposable diaper about a waist and legs of a wearer when the disposable diaper is worn, the disposable diaper comprising a diaper body and a side flap fixed to the diaper body;

wherein an inner end of the side flap is fixed to an inner portion of the diaper body, and either or both of a side edge upper end area and a side edge lower end area of the side flap are joined to the diaper body at an outer portion of the diaper body, the outer portion being spaced in a width direction of the diaper body from the inner portion;

the method comprising:

adjusting respective positions of a first joint part at which the side edge upper end area of the side flap is joined to the outer portion of the diaper body, and a second joint part at which the side edge lower end of the side flap is joined to the outer portion of the diaper body; and

fixing a fastener to an outer end of the side flap in a region which extends outwardly in the width direction from a bonding-free region of the side flap, wherein the side flap is free of direct attachment to the diaper body in the bonding-free region, and wherein the first and second joint parts are spaced from each other in a longitudinal direction of the diaper body by the bonding-free region.

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19. The disposable diaper according to claim 1, wherein one of the first and second joint parts is closer to the respective side edge of the diaper body than the other.

20. The disposable diaper according to claim 1, wherein
the fixing part extends continuously along substantially an entire length, as measured in the longitudinal direction, of the inner edge of the inner end of the respective side flap, and
a length, as measured in the longitudinal direction, of each of the first and second joint parts is shorter than half of that of the fixing part.

22. The disposable diaper according to claim 1, further comprising:
leg elastic elements extending in the longitudinal direction and along the side edges of the diaper body;
wherein the second joint part of each the side flap overlaps at least one of the leg elastic elements.

23. The disposable diaper according to claim 22, wherein the first joint part of each the side flap is located on an imaginary extension of said at least one of the leg elastic elements but does not overlap any of the leg elastic elements.

24. A disposable diaper, comprising:
a diaper body having a top sheet, a back sheet, and an absorbent body enclosed between the top sheet and the back sheet;
a pair of side flaps fixed to the diaper body; and
a pair of fasteners;
wherein the diaper body further has a pair of side edges extending in a longitudinal direction of the diaper body;
wherein each of the side flaps extends in a width direction of the diaper body and has an inner end being disposed inboard of a respective one of the side edges of the diaper body

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and an outer end being disposed outboard of the respective side edge of the diaper body, and each of the fasteners is fixed to the outer end of one of the side flaps;

wherein each of the side flaps is fixed to the diaper body at

a fixing part being arranged adjacent and along an inner edge of the inner end of the respective side flap,

a first joint part located at an upper part of the inner end of the respective side flap, and

a second joint part located at a lower part of the inner end of the respective side flap, the fixing part being spaced, in the width direction of the diaper body, inwardly from the joint parts by a bonding-free region in which the side flap is free of direct attachment to the diaper body, and the second joint part being spaced in the longitudinal direction from the first joint part by a section of the bonding-free region; and

wherein each of the fasteners is disposed such that the fastener is not co-elevational in the longitudinal direction with any portion of the first joint part and the second joint part.

25. The disposable diaper according to claim 24, wherein each of the fasteners is disposed such that an entirety of the fastener is co-elevational in the longitudinal direction with the bonding-free region's section that separates the first and second joint parts in the longitudinal direction; and

wherein a pulling force, which occurs when the fastener fixed to each of the side flaps is pulled transversely outwardly in use, is dispersed into first and second tensile forces directed towards the first and second joint parts, respectively, and concentrated around leg and waist openings of the diaper for enhanced fit of the diaper on a wearer in use.

26. The disposable diaper according to claim 25, wherein each of the side flaps extends continuously in the longitudinal direction from the first joint part, across the bonding-free region's section that separates the first and second joint parts, and to the second joint part, without being interrupted by any bonding line or edge of the side flap.

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IX. EVIDENCE APPENDIX

None

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X. RELATED PROCEEDINGS APPENDIX

None